

## REMARKS

This Response is submitted in reply to the final Office Action mailed on February 7, 2007. No fee is due in connection with this Response. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-584 on the account statement.

Claims 1 and 6-21 are pending in this application. Claims 2-5 were previously canceled. In the Office Action, Claims 1 and 6-21 are rejected under 35 U.S.C. §103. For at least the reasons set forth below, Applicants respectfully submit that the rejection should be withdrawn.

In the Office Action, Claims 1 and 6-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over CA Patent No. 950750 to Hegadorn et al. ("*Hegadorn*"). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claim 1 recites, in part, a biscuit mass comprising a mixture consisting essentially of particles of baked biscuit and at least one fat, the mixture contains 20 to 60% by weight of the biscuit particles and 40 to 80% by weight of the fat. Independent Claim 16 recites, in part, a process for manufacturing a composite frozen confection comprising bringing an ice confectionery and a biscuit mass consisting essentially of particles of baked biscuit and at least one fat into contact to form the composite confection. In contrast, Applicants respectfully submit that *Hegadorn* is deficient with respect to the present claims.

An advantage of an embodiment of the present invention is to provide a biscuit mass that looks like a biscuit at -10 °C or below, but is liquid from 15 °C or above, and which can be processed with an ice confectionery as a coating, core or inclusion. For example, the biscuit mass consists essentially of a mixture of baked biscuit particles and a fat and maintains its biscuit-like consistency on storage at low temperatures and consumption. In addition, the present claims provide the advantage that there is no emulsion of the fat with an aqueous phase containing sugar and no dramatic increase of the viscosity of the mass as in the case, for example, where fat is mixed with water and sugar. This enables the liquid formulation of the present claims to be processed in a regular ice confection coating or injection operations.

In view of the advantages of the present invention, Applicants respectfully submit that *Hegadorn* teaches away from the present claims. Moreover, if the proposed modification would

render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). This certainly applies here where the cited reference is directed to a product that is intended to be baked.

For example, *Hegadorn* is entirely directed to a mix used for a pre-baked crust that simulates a baked pie crust and is suitable for baking to form a harder crust. See, *Hegadorn*, page 2, lines 15-21. For *Hegadorn*'s mix to be suitable for baking, *Hegadorn* teaches using a higher amount of pastry crumbs, a lower amount of fat and preferably a binder (to keep food components together), which distinguishes it from the present invention. See, *Hegadorn*, page 5, lines 8-12. Moreover, *Hegadorn* is completely unconcerned with a biscuit mass capable of being used at lower temperatures (e.g. freezing) in a composite ice confectionery, which has different mixture requirements. As a result, the process and characteristics for making the product of *Hegadorn* and the claimed biscuit mass is important and specific to each particular product. Accordingly, *Hegadorn* teaches away from the present invention, and one having ordinary skill in the art would not be motivated to arrive at the present claims in view of *Hegadorn*.

Applicants also respectfully disagree with the Patent Office's assertion that it would have been obvious to vary the fat content of the mix in *Hegadorn* when desiring to alter the taste, texture or consistency of the mixture. In fact, *Hegadorn* explicitly teaches that its mix has from 7% to 25% fat, which teaches away from Claim 1. The reason *Hegadorn* uses a smaller percentage of fat is because its product is intended to be baked and therefore a reduced amount of fat is necessary. Moreover, *Hegadorn* highly prefers using additional ingredients such as a binder to help produce a firmer baked crust.

Finally, Applicants respectfully submit that *Hegadorn* fails to disclose or suggest every element of the present claims. For example, *Hegadorn* fails to disclose or suggest a biscuit-like mass comprising a mixture consisting essentially of particles of baked biscuit and 40 to 80% by weight of fat as required, in part, by Claim 1. *Hegadorn* also fails to disclose or suggest a process for manufacturing a composite frozen confection comprising bringing an ice confectionery and a biscuit mass consisting essentially of particles of baked biscuit and at least one fat into contact to form the composite confection as required, in part, by Claim 16. For at

least the reasons discussed above, *Hegadorn* does not teach, suggest, or even disclose the present claims, and thus, fails to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1 and 6-21 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett  
Reg. No. 30,142  
Customer No. 29157

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